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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of

Computation of Rates for  
Attachment of Cable Television  
Hardware to Utility Poles

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CS 97-98

AAD 94-125

COMMENTS OF U S WEST COMMUNICATIONS, INC.

U S WEST Communications, Inc. ("U S WEST"), through counsel and pursuant to Public Notice<sup>1</sup> and Section 1.3 of the Federal Communications Commission's ("Commission") Rules,<sup>2</sup> submits these Comments in support of the Petition for Clarification, or in the Alternative, a Waiver of Southwestern Bell Telephone Company filed in the above-captioned matter.<sup>3</sup> U S WEST agrees with Southwestern Bell Telephone Company ("SWBT") that the current method for computing rates for cable television pole attachments produces irrational, and potentially unlawful, results and requires additional clarification by the Commission.

<sup>1</sup>Public Notice, Southwestern Bell Telephone Company Files a Petition for Clarification, or in the Alternative, a Waiver of the Commission's Method of Computing Rates for Cable Television Pole Attachments, DA 94-1232, rel. Nov. 14, 1994.

<sup>2</sup>47 CFR § 1.3.

<sup>3</sup>Petition for Clarification, or In the Alternative, a Waiver of Southwestern Bell Telephone Company filed Aug. 26, 1994 ("SWBT Petition").

## I. INTRODUCTION

As explained fully by SWBT in its Petition,<sup>4</sup> under the current formula for computing rates for cable television pole attachments, the potential exists for net pole investment to be negative. This results from the inclusion of a large net salvage cost for pole removal in the depreciation reserve component of the net pole investment calculation. SWBT describes such a situation which has occurred in its region in the State of Oklahoma.<sup>5</sup> This negative net pole investment carries forward and significantly impacts the overall pole attachment rate calculation -- resulting in an illogical, and potentially unlawful, negative pole attachment rate. Such a result was clearly not intended by the Pole Attachment Act.<sup>6</sup>

## II. POLE ATTACHMENT RATES CALCULATED PER COMMISSION FORMULA MAY NOT BE JUST AND REASONABLE

Pertinent sections of the Pole Attachment Act provide:

(b) (1) Subject to the provisions of subsection (c) of this section, the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable . . . .

. . . .

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<sup>4</sup>Id. at 1-3.

<sup>5</sup>Id. Similar negative net pole investment situations exist in five U S WEST states. As in the case of SWBT, this situation occurs as a result of a large net salvage component for the removal of these poles; causing the depreciation reserve to exceed the gross pole investment, and, thus, a negative net pole investment. Also, similar to SWBT, U S WEST has not fully recovered its existing pole investment in the states where this situation exists. In fact, on average, U S WEST has recovered only an estimated 49% of pole investment across its region.

<sup>6</sup>47 USC § 224.

(d) (1) For purposes of subsection (b) of this section, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.<sup>7</sup>

The Pole Attachment Act specifies a minimum recovery amount for pole attachments. A negative pole attachment rate would clearly fall outside of the minimum recovery requirement specified. A rate which did not provide recovery of the minimum amount specified by the statute would not be just and reasonable and, therefore, would be unlawful. To avoid this potentially unlawful result, the Commission should revise its current pole attachment rate formula to prevent this possible outcome. Logic and, in this case, the statute dictate that a negative pole attachment rate is untenable. A revision of the current formula is certainly warranted and proper.

### III. NET SALVAGE SHOULD BE REMOVED FROM THE DEPRECIATION RESERVE

SWBT has proposed that the Commission clarify its pole attachment formula by removing net salvage from the depreciation reserve to remedy this negative net pole investment problem.<sup>8</sup> In the alternative, SWBT has requested a waiver to al-

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<sup>7</sup>47 USC § 224(b)(1), (d)(1).

<sup>8</sup>SWBT Petition at 3.

low it to calculate pole attachment rates consistent with its proposal above.<sup>9</sup>

U S WEST supports SWBT's request for clarification and/or modification of the net pole investment formula as specified by SWBT. If that proposal is not acceptable, U S WEST also requests a waiver to calculate pole attachment rates consistent with the SWBT proposal.

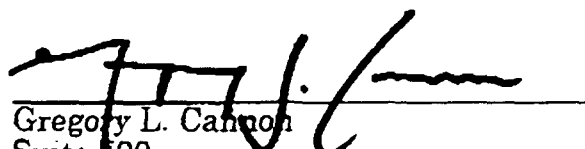
#### IV. CONCLUSION

U S WEST believes that this clarification is necessary and in the public interest to prevent a potentially unlawful result in the calculation of pole attachment rates by using the Commission's current formula. For this, and the foregoing reasons, U S WEST supports SWBT's Petition for Clarification, or in the Alternative, a Waiver of the Commission's pole attachment rate calculations.

Respectfully submitted,

U S WEST COMMUNICATIONS, INC.

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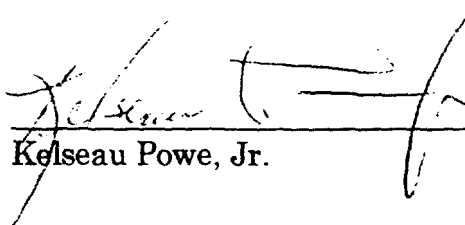
December 12, 1994

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<sup>9</sup>Id. at 5.

## CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 12th day of December, 1994, I have caused a copy of the foregoing **COMMENTS OF U S WEST COMMUNICATIONS, INC.**, to be served via first-class U.S. Mail, postage prepaid, upon the persons listed on the attached service list.

  
Kelseau Powe, Jr.

**\*Via Hand-Delivery**

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